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UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

LAS VEGAS SUN, INC., a Nevada
 corporation,

Plaintiff,

v.

SHELDON ADELSON, an individual, and as
 the alter ego of News+Media Capital Group
 LLC, Las Vegas Review-Journal, Inc., and
 Interface Operations LLC dba Adfam;
 PATRICK DUMONT, an individual, and as
 alter ego of Las Vegas Review-Journal, Inc.,
 News+Media Capital Group, LLC, and Interface
 Operations LLC dba Adfam; NEWS+MEDIA
 CAPITAL GROUP LLC, a Delaware limited
 liability company; LAS VEGAS REVIEW-
 JOURNAL, INC., a Delaware corporation;
 INTERFACE OPERATIONS LLC DBA
 ADFAM, a Delaware limited liability company

Case No. 2:19-cv-01667-ART-MDC

**PLAINTIFF/COUNTERDEFENDANTS'
 MOTION TO SET TRIAL**

and as alter ego of Las Vegas Review-Journal, Inc., and News+Media Capital Group, LLC; and DOES, I-X, inclusive,

Defendants.

LAS VEGAS REVIEW-JOURNAL, INC., a Delaware corporation,

Counterclaimant,

v.

LAS VEGAS SUN, INC. a Nevada corporation; BRIAN GREENSPUN, an individual and as the alter ego of Las Vegas Sun, Inc.; GREENSPUN MEDIA GROUP, LLC, a Nevada limited liability company, as the alter ego of Las Vegas Sun, Inc.,

Counterclaim Defendants.

Pursuant to Federal Rule of Civil Procedure 83(b) and the Court’s inherent authority, Plaintiff/Counterdefendant Las Vegas Sun, Inc., and Counterdefendants Brian Greenspun and Greenspun Media Group, LLC (together, for the purposes of this Motion for ease of reference, the “Sun”), move this Court to set trial. This Motion is based on the following Memorandum of Points and Authorities, and the pleadings and papers on file herein.

DATED this 16th day of May, 2024.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Kristen L. Martini

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This nearly five-year-old action is ripe for trial. Discovery has been closed for more than a year and this Court already resolved the parties' cross-motions for summary judgment in its March 31, 2024, Order ("Order"). ECF No. 826; ECF No. 970. The Court's Order triggered pretrial proceedings. In its natural course, this action should have already been set for trial. This Court's availability to conduct a five-week trial is understandably limited to start dates of April 7, 14, or 21, or June 9 or 16, 2025. Thereafter, the Court's next availability is not until 2026. Consistent with the RJ's procedural machinations employed throughout this litigation, the RJ has filed a premature appeal from this Court's Order on the enforceability of the Amended JOA, and has simultaneously refused to set any trial date—despite the Court's soonest availability being nearly a year from now. To further delay the resolution of the Sun's claims on the merits, and obtain a stay irrespective of whether its formal request for a stay is meritorious, the RJ suggested that it is not available for any April or June 2025 trial date. The RJ's 'reasons' are that Defendant Dumont supposedly has vague "business" to tend to for the Las Vegas Sands in April, and one the RJ's witnesses has a wedding to attend in June. Notwithstanding the RJ's post-hoc assertions of conflict, the RJ concedes trial can begin on April 21, 2025. The Sun is also available to begin trial on April 21, 2025, but the RJ refuses to set a trial date because of its appeal ploys, forcing the Sun to bring this Motion.

It is apparent that Court intervention is necessary to preserve a 2025 trial date. Allowing the RJ to continue refusing a trial setting effectively grants the RJ the relief sought in its pending Motion to Stay—in which the RJ expressly asks this Court to stay this entire case or, alternatively, to delay setting trial until its appeal is resolved. The Sun explained in its Opposition why the RJ's Motion to Stay must be denied, and how the RJ failed to meet its burden in seeking that request. *See* ECF No. 982. The Sun will spare the Court's resources, and not repeat those reasons again. *See id.* It suffices to say that the RJ's challenge to this Court's Order will fail before the Ninth Circuit—if the Ninth Circuit even reaches the merits of the appeal—because this Court's ruling that the Amended JOA is enforceable is legally and factually sound. And the RJ's appeal will not impact the administration of trial or this Court's ability to resolve pretrial matters.

1 The Sun respectfully requests that this Court proceed to set trial for 2025. The alternative
 2 delays resolution of the merits of the Sun’s claims until 2026—nearly seven years after the Sun
 3 initiated this action. The RJ has consistently used litigation and delay as part of its anticompetitive
 4 scheme to eliminate the Sun, the Adelson family’s plan all along. This Court, the Sun, and the
 5 public have an interest in the expeditious resolution of litigation.

6 **II. STATEMENT OF RELEVANT FACTS**

7 The Sun initiated this action on September 24, 2019. ECF No. 1. Nearly three years later,
 8 on August 24, 2022, fact discovery closed and, another eight months later, expert discovery closed
 9 on May 10, 2023. *See* ECF No. 722; ECF No. 826. The parties submitted their cross-motions for
 10 summary judgment on May 30, 2023, wherein both parties sought judgment on the RJ’s Second
 11 Affirmative Defense to render the Amended JOA illegal and unenforceable for lacking Attorney
 12 General signature under the Newspaper Preservation Act (“NPA”). *See* ECF No. 829 at 34-43; ECF
 13 No. 843 at 47-53. Ten days later, the RJ filed its Motion to Dissolve Preliminary Injunction
 14 (“Motion to Dissolve”) (ECF No. 853), arguing the RJ should no longer be required to uphold its
 15 agreement to maintain the status quo until final judgment on the merits—an obligation voluntary
 16 undertaken by the RJ and effective when the RJ asked the Court to enter its Order on the parties’
 17 Stipulation to Maintain the Status Quo (“Status Quo Order”) (ECF No. 13).¹ The RJ filed its Motion
 18 to Dissolve to circumvent the summary judgment proceedings and attempt to finagle a premature
 19 interlocutory appeal to the Ninth Circuit (given that the Court’s ruling on the motions for summary
 20 judgment is not automatically appealable). *See* 28 U.S.C. §§ 1291, 1292(a)(1).

21 On March 31, 2024, this Court issued its 50-page Order resolving the parties’ motions for
 22 summary judgment, the RJ’s Motion to Dissolve, and numerous related motions. *See* ECF No. 970.
 23 On April 10, 2024, the RJ filed its Notice of Appeal from the Court’s Order denying the RJ’s
 24 Motion to Dissolve, “including related portions of the Order cited to and relied on by the District
 25 Court in support of its denial of the motion to dissolve the preliminary injunction.” ECF No. 972 at
 26 2. On April 11, 2024, the Ninth Circuit issued its Preliminary Injunction Time Schedule Notice,
 27

28 ¹ The factual background for the Status Quo Order can be found in the Sun’s Opposition to the RJ’s
 Motion to Dissolve. *See* ECF No. 881 at 2-11.

1 requiring all briefing to be completed on an expedited basis by June 27, 2024.² *See* ECF No. 976.

2 This Court's Order triggered the 30-day deadline for the parties to file their proposed joint
3 pretrial order required under LR 16-3(b) and the parties promptly began conferring about the
4 pretrial order. *See* ECF No. 799; LR 26-1(b)(5). A paralegal on the Sun team contacted the Court's
5 Courtroom Administrator to inquire about availability for a five-week jury trial so that the parties
6 could propose three trial dates in their pretrial order. ECF No. 982-3 ¶ 3. As of April 18, 2024,
7 Ms. Sutherland, the Courtroom Administrator, advised that the Court's soonest availability for a
8 five-week trial is in 2025, starting on April 7, 14, or 21, or June 9 or 16. *Id.* Otherwise, the Court is
9 not available for such a lengthy trial until 2026. *Id.* If the parties do not secure one of the 2025
10 dates, the next trial date is nearly two years away. *See id.*

11 On April 18, 2024, in the middle of discussions regarding the pretrial order, the RJ filed a
12 non-emergency Motion to Stay, seeking to stay this entire action or, alternatively, to stop the Court
13 from scheduling the trial. *See* ECF No. 979. The Sun opposed the Motion to Stay on May 2, 2024,
14 explaining the RJ's attempt to delay trial in this nearly 5-year-old case was meritless, including
15 because the Ninth Circuit does not have jurisdiction over the RJ's appeal, the RJ does not have
16 standing to appeal this Court's ruling on the RJ's Motion to Dissolve the Status Quo Order, and
17 this Court's interpretation of the NPA was correct. *See* ECF No. 982 at 13-19. The Sun also
18 explained that even if the RJ had a chance of success on the merits, a stay is not warranted because
19 the RJ will not suffer irreparable harm absent a stay and the Court, the Sun, and the public's interests
20 favor resolving this action expeditiously. *Id.* at 19-25.

21 On April 22, 2024, when meeting and conferring to extend the deadline to file the pretrial
22 order (*see* ECF No. 984), the Sun asked the RJ whether the Court's availability for the trial changed
23 the RJ's position with respect to its requested stay. ECF No. 982-2 at 4:18-5:17. The RJ informed
24 the Sun that its position has not changed, and it still seeks a stay of this action. *Id.* at 5:8-13. The

25 ² On May 1, 2024, the Ninth Circuit issued a *sua sponte* order mandating that the parties "address
26 the basis for this court's jurisdiction over this appeal" in their briefs. ECF No. 982-1. The Ninth
27 Circuit particularly ordered the parties to brief the following questions: (1) whether the Ninth
28 Circuit even has jurisdiction over the Court's interlocutory order on the denial of the RJ's "motion
to 'dissolve' the parties' stipulated order to maintain the status quo," and (2) whether the RJ is
"sufficiently 'aggrieved' by an order that maintains the parties' agreed-upon status quo" to confer
the RJ standing to appeal. *Id.*

1 RJ nevertheless agreed to provide the Sun with its availability for trial, stating it was concerned
2 about only the availability of RJ lead counsel David Singer, but that all other counsel is available.
3 *See id.* at 16:6-18, 27:3-17. The RJ, however, changed its position just a week later, when the RJ
4 asserted it was unavailable for any of the Court's open trial dates in 2025 due to Defendant
5 Dumont's vague "Las Vegas Sands" business in April, and another RJ witness's attendance at a
6 wedding in June. ECF No. 982-4 at 2-5. The next day, the RJ backtracked again, this time asserting
7 that it is available for trial in late April 2025, but that it is still "not willing to stipulate to a trial
8 date." *Id.* at 1.

9 The parties agreed to stipulate to extend the deadline to file the pretrial order to August 20,
10 2024, given the complexity of this action, and this Court issued its order granting the stipulation on
11 May 8, 2024. ECF No. 984. By August 20, 2024, the parties will have submitted the proposed
12 pretrial order with statements regarding the nature of this action, the Court's jurisdiction,
13 uncontested facts, contested issues, and material law and facts, and lists of exhibits, witnesses, and
14 motions in limine, among other things. *See* LR 16-3. Meaning, by the end of *this coming* August,
15 the parties will have taken substantial steps to organize their strategies and materials for trial and
16 will be prepared to begin trial in 2025.

17 **III. LEGAL STANDARD**

18 This Court has inherent authority to manage its docket "to achieve the orderly and
19 expeditious disposition of cases." *Dietz v. Bouldin*, 579 U.S. 40, 45 (2016) (quotations and citation
20 omitted); *see also* Fed. R. Civ. P. 83(b) ("A judge may regulate practice in any manner consistent
21 with federal law, rules adopted under 28 U.S.C. §§ 2072 and 2075, and the district's local rules.");
22 *Spurlock v. F.B.I.*, 69 F.3d 1010, 1016 (9th Cir. 1995) ("A district court possesses inherent power
23 over the administration of its business."). Exercise of the Court's "inherent power must be a
24 reasonable response to the problems and needs confronting the court's fair administration of
25 justice," and "cannot be contrary to any express grant of or limitation on the district court's power
26 contained in a rule or statute." *Dietz*, 579 U.S. at 45 (quotations and citations omitted).

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1 **IV. ARGUMENT**

2 This case is ripe for trial and should naturally progress to it. Both fact discovery and expert
3 discovery have been closed for more than one and nearly two years, respectively, and this Court
4 has already resolved the parties' cross-motions for summary judgment. ECF No. 722; ECF No.
5 826; ECF No. 970. All that remains are the pretrial order, pretrial motions, and trial itself. *See* ECF
6 No. 984. The parties have already started working on their portions of the pretrial order, and pretrial
7 preparation. Delaying the trial will not stop this preparation.

8 Furthermore, setting the trial now is the most "reasonable response to the problems and
9 needs confronting the court's fair administration of justice." *Dietz*, 579 U.S. at 45 (quotations and
10 citation omitted). The parties agree this complex action requires a five-week jury trial. ECF No.
11 982-2 at 2:4-13. Reasonably, this Court has limited availability for a five-week jury trial, with
12 availability in April or June 2025, and not again until 2026. ECF No. 982-3 ¶ 3. Reducing the
13 available dates for trial even further, the RJ has insisted it is available only in "late-April 2025."
14 ECF No. 982-4 at 2. It is suspect that Mr. Dumont's unclear "Las Vegas Sands" business cannot
15 be rescheduled for a trial—a year from now—in which he is a named Defendant accused of serious
16 antitrust violations, for which the Sun seeks to hold him personally liable. And even more dubious
17 is the RJ's contention that one of its representative witness's attendance at a wedding (typically, a
18 one-day event on a weekend) prohibits the trial from being scheduled in June, especially because
19 that witness is not a party and his presence at trial is not required beyond his own testimony.
20 Regardless of the RJ's questionable availability for trial, all parties and counsel agree they are
21 available to begin trial on April 21, 2025.

22 If a trial date for 2025 is not reserved now, trial will almost certainly be pushed to 2026,
23 nearly two years from now and more than six years after this action was filed. This lengthy delay
24 is unreasonable, prejudicial, and will hinder the Sun's ability to obtain justice. While a short delay
25 might not necessarily be prejudicial, under these circumstances, a lengthy, multiple-year delay is
26 prejudicial, and threatens the Sun's existence. The RJ's refusal to stipulate to set trial is just another
27 part of its multi-faceted scheme to eliminate the Sun from the market. The Sun has alleged antitrust
28 claims and seeks treble damages for the RJ's anticompetitive conduct. *See* ECF No. 621. The RJ's

1 challenge to the Amended JOA has compounded the burden on the Sun in this action, and the RJ's
2 appeal and attempt to suspend trial furthers the harm. If trial is delayed, the RJ will be rewarded for
3 prematurely appealing the Order under the guise of appealing the Court's ruling on the RJ's Motion
4 to Dissolve the Status Quo Order—all while continuing to undertake accounting, operational, and
5 other anticompetitive conduct to weaken and harm the Sun, and competition. The RJ's long game
6 has always been to withhold payment to the Sun and extend litigation so that the Sun has no choice
7 but to close its doors.

8 This result runs afoul of the Court's and public's interest in the expeditious resolution of
9 this action. *See, e.g., Porter v. Martinez*, 941 F.2d 732, 733 (9th Cir. 1991) (explaining the public
10 has an “interest in expeditious resolution of litigation” and the court has a “need to manage its
11 docket”); *see also Seiger-Todd v. New Penn Fin. LLC*, 2023 WL 3251783, at *2 (D. Nev. May 4,
12 2023) (invoking inherent power to dismiss action for failure to prosecute, given the public's interest
13 in the expeditious resolution of litigation and the court's need to manage its docket). Nothing in the
14 RJ's appeal impacts the administration of the trial, or this Court's ability to resolve pretrial matters
15 unrelated to the RJ's appeal, such as *Daubert* motions to exclude expert witness testimony and
16 motions in limine. The most reasonable course of action is to expeditiously set trial for April 21,
17 2025, or another proximate date available to the Court.

18 The RJ cannot credibly argue that there is a “limitation on the district court's power” to set
19 trial in this action. *See Dietz*, 579 U.S. at 45. This Court has the inherent authority to manage its
20 docket, including by setting trial. *E.g., id.* Even if the RJ could carry its hefty burden for a stay (it
21 does not come close),³ the Court's issuance of a stay is discretionary, not restrictive of the Court's
22 ability to set trial in a year. *See Nken v. Holder*, 556 U.S. 418, 433 (2009).

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25
26 ³ As discussed at length in the Sun's Opposition to the Motion to Stay, the RJ cannot satisfy its
27 burden to justify a stay because the RJ's appeal will fail on the merits (if the Ninth Circuit reaches
28 the merits at all), the RJ will not suffer irreparable harm if trial is set in 2025, the harm to the Sun
of delaying trial outweighs any harm to the RJ of continuing toward trial, and, finally, the Court's
and public's interest in the expeditious resolution of this action weighs in favor of denying the RJ's
request. *See* ECF No. 982 at 12-25.

1 **V. CONCLUSION**

2 For the foregoing reasons, the Sun respectfully requests that the Court issue an order setting
3 the trial in this matter, subject to the Court's availability, in the first half of 2025.

4 DATED this 16th day of May, 2024.

5 LEWIS ROCA ROTHGERBER CHRISTIE LLP

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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I certify that I am an employee of Lewis Roca Rothgerber Christie LLP, and that on the 16th day of May, 2024, I caused the foregoing **PLAINTIFF/COUNTERDEFENDANTS' MOTION TO SET TRIAL** to be served by electronically filing the foregoing with the CM/ECF electronic filing system, which will send notice of electronic filing to:

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